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Landquist
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Forensic & Investigative Accountants

The Association of Law Officers of the Crown ("ALOC")

A Cost Analysis of
Ontario Government Civil
Legal Services

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A Cost Analysis of Ontario Government Civil Legal Services

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The Association of Law Officers of the Crown ("ALOC")

A Cost Analysis of Ontario Government Civil Legal Services

1.0 INTRODUCTION The Association of Law Officers of the Crown/Des Avocats De La Couronne ("ALOC") is a professional association representing lawyers who provide "in-house" civil legal services to the Province of Ontario.

Its approximately 450 members are responsible to the Attorney General of Ontario. The majority are attached to the Legal Service Branches of provincial ministries. Others are employed in the Ministry of the Attorney General in the Crown Law Office, Civil ("CLOC"), the Constitutional Law and Policy Branches or Provincial Agencies, Boards and Commissions.

The Government of Ontario ("the Government") has indicated it will significantly reduce the size of the Ontario Public Service to lower the provincial deficit. As part of this strategy, the Government has stated that it will look at every Ministry to reduce costs, including cutting jobs where appropriate.

ALOC believes that to the extent this strategy results in layoffs among its members, it will significantly:

- increase costs to the Government because, given the current level of legal service requirements and the Government's legislative program, it is not anticipated that the demand for legal services will decrease, and therefore, any ALOC job cuts could necessitate a higher level of outsourcing of civil legal services to the private sector which will be more expensive than if performed in-house; and



-
- reduce the quality of the civil legal services provided to the Province.

Lindquist Avey Macdonald Baskerville Inc. ("Lindquist Avey"), an independent firm of forensic accountants and corporate investigators with offices in Canada, the United States and the United Kingdom, was retained by ALOC to review the cost and quality implications of significantly reducing the number of ALOC members.

In particular, Lindquist Avey was asked to review and comment on:

- the cost of civil legal services currently provided to the Province of Ontario and the extent to which civil legal services are contracted out to private law firms, a practice known as outsourcing;
- the comparison between the cost to the Provincial Government of using in-house civil legal services and the cost of equivalent services from private sector law firms;
- the nature and characteristics of the services currently provided by ALOC members; and
- the approaches of other Governments to reducing the cost of civil legal services.



2.0 SUMMARY OF FINDINGS

Based upon the scope of our review as identified in Section 3 of this report, our findings are as follows:

Cost Benefit of ALOC Versus Outsourcing:

A comparative analysis of compensation and effective costs to the Province of equivalent billable hours between ALOC members and private sector lawyers shows it is clearly less costly to use ALOC lawyers to provide civil legal services rather than lawyers in private practice.

The key factors in this analysis are summarized in the following table:

	<u>ALOC Lawyer</u>	<u>Private Sector Lawyer</u>	
		<u>Ontario Government Rate</u>	<u>Toronto Standard Rate</u>
• Average cost per billable hour	\$110	\$169	\$236
• Average/median compensation based on number of years since called to bar			
1	\$51,120		\$65,000
4	58,724		\$80,000
9-11	82,052		\$182,000
• Cost of 1994-95 legal services assuming 456 lawyers each with billable hours of 1,500	75,719,561	115,596,000	\$161,424,000
• Cost to the Provincial Government of Outsourcing:			
At Ontario Government rate		\$39,876,439 +53%	
At Toronto standard rate			\$85,704,439 +113%

The basis of these calculations are described later in this report and are referenced in the attached accounting schedules.



We note that the above table shows that:

- Assuming all ALOC lawyers worked 1,500 billable hours a year, it would have cost \$115.6 million, or 53% more, to have private sector lawyers provide the equivalent services at the average government rate of \$169. At the average standard hourly billing rate of Toronto law firms of approximately \$236, the cost to the Province would have been \$161.4 million, or 113% more; and
- ALOC members are paid significantly less than lawyers who were called to the bar in the same year. For example, after 10 years in practice, private sector lawyers earn on average about \$100,000 more than ALOC members.

The Cost-Cutting Experience of Other Governments

- The Federal Government and the Governments of Alberta, New Brunswick and British Columbia have reduced their use of lawyers in private practice in order to meet cost-cutting targets, rather than eliminating in-house lawyers;
- A review of services and related costs in the United Kingdom was carried out for the Government of Margaret Thatcher by Sir Robert Andrew KCB in 1988. This review concluded that in-house lawyers provided necessary government legal services at a significantly lower cost than lawyers in private practice; and
- The U.K. study also found that many of the Government's legal service needs could only be met by in-house lawyers.

Public Law Expertise of ALOC Members

- ALOC members provide a wide-range of specialized legal services necessary for the daily operation of the Government. In particular, they: provide legal, policy and legislative advice; draft laws and regulations; defend Government decisions before tribunals; mediate conflicting legal interests among Ministries to ensure a consistent Government legal position; represent the Government in civil litigation and appeals; and prosecute provincial offences;



-
- Based on our reviews and research, we note that ALOC members are able to respond to crisis situations, including the preparation of injunctions, have specialized knowledge in public law and provide legal consistency as a result of their institutional memory; and
 - ALOC members have considerable experience in representing the Government before the Supreme Court of Canada, the Ontario Court of Appeal and in Divisional Court.

Other Considerations

- ALOC members are not subject to the same potential for conflicts of interest as private sector law firms which have a multiplicity of clients. If increased reliance is placed on outsourcing legal services, conflicts of interest could hamper the Government's ability to obtain consistency, continuity and independence of legal advice;
- The Government currently enjoys an ease of access and consultation with ALOC members who are on-site and thus can readily provide the advice necessary in formulating Government policies and procedures. It may be difficult and costly for the Government to obtain the same daily service from private practice lawyers;
- Since all Ministries rely upon the Crown Law Office, Civil, which is housed at the Ministry of the Attorney General, to provide litigation services in major matters, reductions in its staff may result in Ministries having to outsource those services. Moreover, our interviews with officials in other jurisdictions indicate that governments may wish to consider implementing a charge-back system rather than contracting out;
- Given the Government's intention to reduce the size of the public sector in Ontario, it may wish to examine, in advance of such downsizing, the nature and extent of legal services required to efficiently initiate and sustain this process. Moreover, in respect of ALOC members, it may wish to take into consideration the value of maintaining its institutional



memory on legal issues, and the considerable investment it has made in ALOC member services; and

- The Government may also wish to consider the potential administrative costs of allocating, controlling and monitoring private sector retentions if the volume is increased dramatically. In addition, it may also wish to consider the cost of renting and/or maintaining office space which would no longer be required and which could not necessarily be avoided in the short term.



3.0 SCOPE OF WORK In performing our work we have reviewed and relied upon the following information and documentation:

- report titled "Professional Bargaining Lawyers -- sorted by Ministry, Class Title, Surname, Date as of March 31, 1995" dated July 13, 1995, prepared by the Provincial Government;
- report titled "Human Resources Information System Listing of Lawyers by Year of Call" dated October 2, 1995 prepared by the Provincial Government;
- report 9A titled "Summary of Payments to Private Sector Law Firms During the Fiscal Year Ending: March 31, 1995" prepared by the Provincial Government (undated);
- report titled "Private Sector Retentions -- Fees Paid by Client Ministry Fiscal Year 1990/91 to 1994/95 (year-to-date)" dated October 4, 1995, prepared by the Provincial Government;
- schedule titled "Public Law and Policy Division 1995/96 Budget and # of Counsel" prepared by the Ministry of the Attorney General and dated January 26, 1996;
- schedule titled "Ministry of the Attorney General Hourly Rates for Retention of Private Sector Lawyers" effective May 15, 1993 as prepared by the Ministry of the Attorney General;
- the "Civil Law Program Review" final report dated August 31, 1993;
- ALOC interim report titled "Government of Ontario Legal Services Contracting Out Analysis for 1992/93 Fiscal Year" prepared November 23, 1993;
- ALOC report titled "Government of Ontario Legal Services Contracting Out Analysis for 1992/93 Fiscal Year (Based on Ministry Assumptions)" prepared April 15, 1994;
- the Price Waterhouse 1995 Law Firm Compensation Survey;
- the Canadian Bar Association's 1995 Law Practice and Compensation Survey;



-
- the Canadian Lawyer's 1993, 1994, 1995 "National Associate Survey" and "National Compensation Survey";
 - the 1968 Report of the Ontario Royal Commission Inquiry Into Human Rights by former Chief Justice McRuer; (McRuer Report);
 - the 1988 United Kingdom report entitled "Review of Government Legal Services" by Sir Robert Andrew KCB;
 - interviews with ALOC members and other Provincial officials; and
 - discussions with senior officials in other jurisdictions on the methods being employed by other governments to control legal costs. The officials asked not to be named.



**4.0 COST OF CIVIL
LEGAL
SERVICES
CURRENTLY
PROVIDED TO
THE PROVINCIAL
GOVERNMENT**

The estimated total cost of civil legal services provided to the Provincial Government in the fiscal year ending March 31, 1995 was \$93.6 million. This total is made up as follows:

In-house Services	\$000's	%
ALOC Members		
• Salaries	\$ 38,463	41%
• Benefits	\$6,152	7%
Support Staff Including Law Students, Secretarial and Administrative Staff	11,316	12%
Budgeted Direct Costs	15,000	16%
Estimated Occupancy Costs	<u>4,788</u>	<u>5%</u>
Sub-total In-house Costs	75,719	81%
 Outside Services		
Private Sector Fees and Disbursements	<u>17,889</u>	<u>19%</u>
TOTAL	<u>\$93,608</u>	<u>100%</u>

This information is illustrated in Figure 1. Based on the above analysis, 19% of current legal services costs are expended on private-sector lawyers. Details supporting this analysis, and the assumptions made, are provided in Schedule 1.

**4.1 ALOC
compensation vs.
that in private
practice**

Our review shows that compensation for in-house government lawyers is lower than the compensation paid to private sector lawyers and the differential increases substantially over time.

Summarized below are the average 1995 compensation levels for ALOC members based on year of call to the Bar compared to average 1995 salary levels for lawyers currently working in private practice in Toronto law firms (1-40 lawyers). The compensation data for the private practice comparisons was taken from "The Price Waterhouse 1995 Law Firm Compensation Survey." This survey was performed in April 1995. Thirty-two law firms representing 1,366 lawyers participated in the survey; a total of 1,005 lawyers were in the



***Estimated Total Costs of Legal Services
Provided to the Ontario Provincial
Government for the Fiscal Year 1994/95***

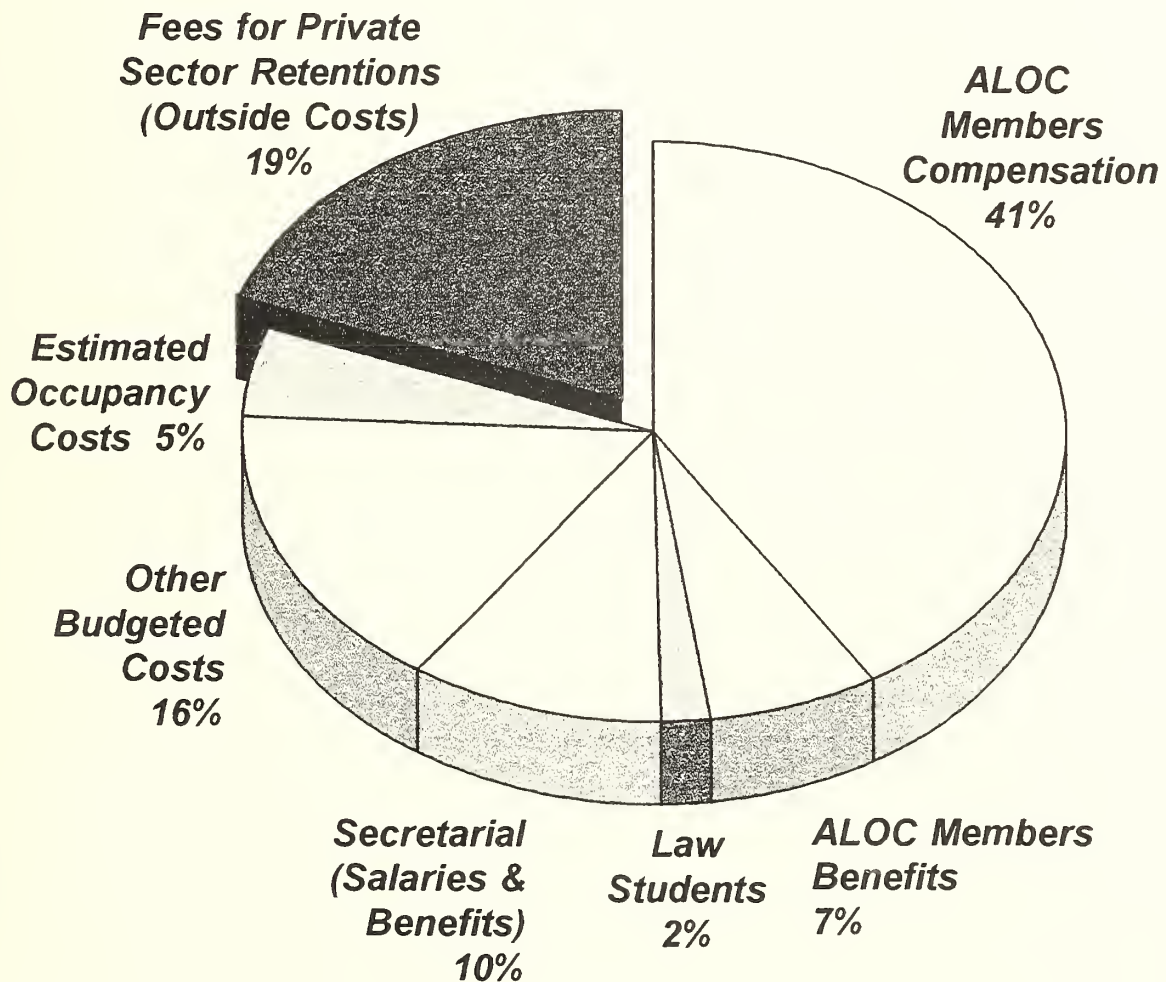


Figure 1



Toronto area in 16 firms. Toronto was used for comparative purposes because ALOC advised that approximately 95% of ALOC members are located in Toronto.

<u>Years Since Bar Admission</u>	<u>ALOC Members</u>	<u>Private Practice</u>	
		<u>Compensation</u>	<u>% of ALOC Members' Compensation</u>
< 1	\$ 51,369	\$ 53,500	104%
1	51,120	65,000	127%
2	51,195	77,000	150%
3	53,542	—	—
4	58,724	80,000	136%
5	61,784	94,000	152%
6-8	72,596	125,000	172%
9-11	82,052	182,300	222%
12-15	99,638	222,750	224%
16-20	106,884	201,000	188%
>21	109,873	171,600	156%

This information is illustrated in Figure 2. Details supporting this analysis and the associated assumptions are provided in Schedule 2.

The figures demonstrate that the starting salary for lawyers in private practice is 4% higher than the starting salary for ALOC members. After nine to eleven years of experience, the average compensation (salary plus bonus and/or profit share) is \$100,000 higher in private practice.

The above remuneration differentials are even higher when ALOC compensation levels were compared to the compensation of their contemporaries in larger Toronto (41+ lawyers) law firms. For example, the average compensation for an ALOC member with six to eight years experience since call to the bar was \$72,596, for a lawyer from a firm with 1-40 lawyers is \$125,000, and for a lawyer from a firm with more than 40



Comparison of 1995 ALOC Compensation Levels to Private Practice Compensation Levels for Toronto Based on Year of Call to The Bar (\$)

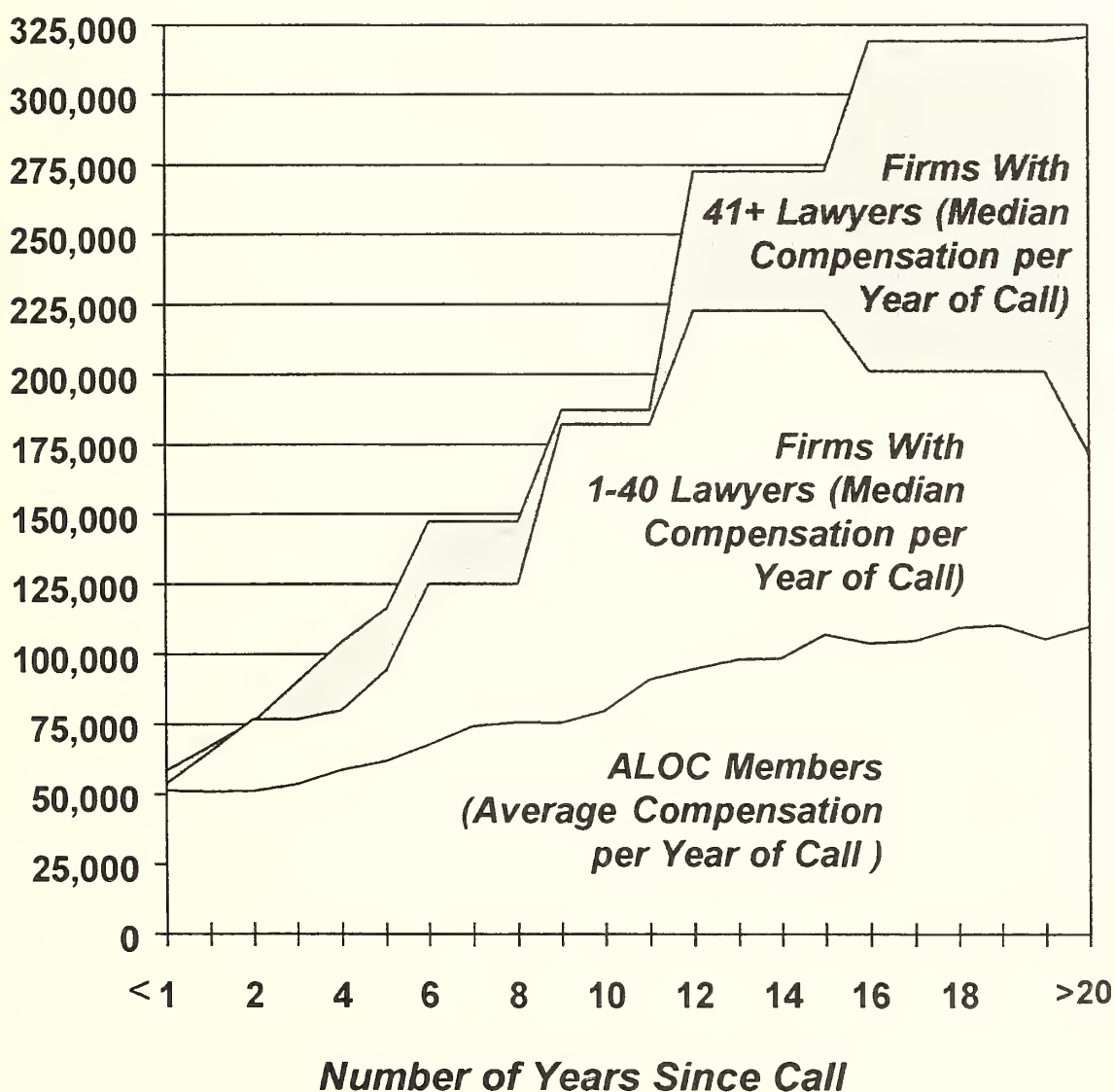


Figure 2



lawyers the compensation is \$147,000. This analysis is also available in Schedule 2.

We also note that as a result of the introduction of the Social Contract in 1993, ALOC members' salaries have not been increased in the last three years. The salary levels quoted for ALOC members for 1995 do not reflect any reduction for the 7.4 Mandatory Social Contract Leave Days taken in 1994-95 fiscal year. These would result in a 2.85% salary reduction when applied. In contrast, the average salary levels for associates in private practice have increased 2.5% over the last year. This is based on information included in the annual "National Associate Survey" published by "The Canadian Lawyer," for the years 1994 and 1995.

4.2 Costs of Outside Legal Services

The total fees for outside legal services provided to the Provincial Government for the fiscal years 1990-91 to 1994-95, as described in Provincial Government documentation, are as follows:

Year	\$000's
1990/91	\$ 20,547
1991/92	24,628
1992/93	26,996
1993/94	21,534
1994/95	19,899

Note that these costs include costs for "per diem crowns." These are private-sector lawyers who perform work for the Ministry of the Attorney General in criminal, as opposed to civil, matters. These costs have averaged \$3.1 million per annum over the five year period.



In summary, after the exclusion of per-diem crowns, the Ministries which have, on average over the last five years, retained the highest portion of outside legal services, in terms of total fees, are as follows:

Ministry of the Attorney General	
- Official Guardian	25.8%
- Family Support Program	<u>4.5%</u>
	<u>30.3%</u>
Ministry of Finance	
- General	15.0%
- Ontario Securities Commission	7.5%
- Ontario Insurance Commission	<u>5.3%</u>
	<u>27.8%</u>
Ministry of Economic Development and Trade	5.6%
Ministry of Environment and Energy	4.6%
Ministry of Natural Resources	<u>4.5%</u>
	72.8%
Others	<u>27.2%</u>
Total	<u>100.0%</u>

4.3 Reasons for Outsourcing Legal Services

As part of the "Civil Law Program Review Project" which reported on August 31, 1993, a working group examined the use of private sector law firms by provincial ministries to "develop recommendations to reduce, as appropriate, the reliance on outside counsel." The finding of the working group on private sector firms was in Appendix N of the Civil Law Program Review Report.

The working group cited the four reasons under which ministries or agencies historically were permitted under the Management Board of Cabinet Directives to retain outside services. They were:

- Unavailability of a government legal officer to assume the legal work;
- The legal work required specialized legal expertise not available within the Ministry of the Attorney General;
- The use of a government legal officer would place the government in a conflict of interest situation; or



-
- Demonstrated cost effectiveness.

The Civil Law Program Review Report found that:

- Use of private sector counsel is an area that has been identified as leading to inconsistent positions and advice and is usually more expensive than use of internal resources.

4.4 Reliability of Data As discussed in Appendix N of the 1993 Civil Law Review Program, "*the method of tracking and reporting fees for outside counsel appears to be inconsistent across ministries.*" In making our comments on the costs of outside legal services, we have relied on reports prepared by Provincial Government departments. However, we do not know if the reports used reflect improvements, if any, in the tracking and reporting of fees. ALOC states that the Government's contracting-out figures may not include the cost of hiring private practice lawyers as consultants.



**5.0 COST
COMPARISONS
IN-HOUSE VS
PRIVATE
SECTOR**

We undertook a comparison of private practice hourly billing rates to equivalent in-house rates for ALOC members. Schedule 3 provides the details of this analysis and Figure 3 illustrates it.

**5.1 Comparison of
Billing Rates**

The average hourly billing rates, as calculated in Schedule 3, are as follows:

ALOC member rates based on salary, other budgeted costs and estimated occupancy costs	\$110
Official Provincial Government rates for private sector retentions	\$169
Standard rates for private sector Toronto firms	\$236

As noted, we have used an average rate of \$110 for ALOC members. This rate includes all identified budgeted costs plus the Government's estimated occupancy costs. Available ministry financial information does not provide any comprehensive information with respect to occupancy costs, being defined as costs relating to building and building operating costs. We have estimated the costs of occupancy at \$10,500 per lawyer which, when factored into our analysis in Schedule 3, results in an equivalent billing rate of \$110. This rate equates to the average billable hourly rate which was used by The Office of the Executive Co-Ordinator, Seconded Legal Services as stated in the ALOC report "Government of Ontario Legal Services Contracting Out Analysis for 1992/93 Fiscal Year (Based on Ministry Assumptions)" dated April 15, 1994.

The average Official Provincial Government rate of \$169 was reported to us as the average calculated by a review of the database of all fiscal 1994-95 invoices for outsourced legal services with the exclusion of the Family Support and Official Guardian Programs. We were advised that the Government used this calculation to establish an average rate to use in comparing outsourcing costs to in-house rates. We note that a simple average of the Official Provincial Government rate,



Comparison of 1995 ALOC Hourly Rates to Toronto Private Practice Billing Rates Based on Year of Call to The Bar (\$)

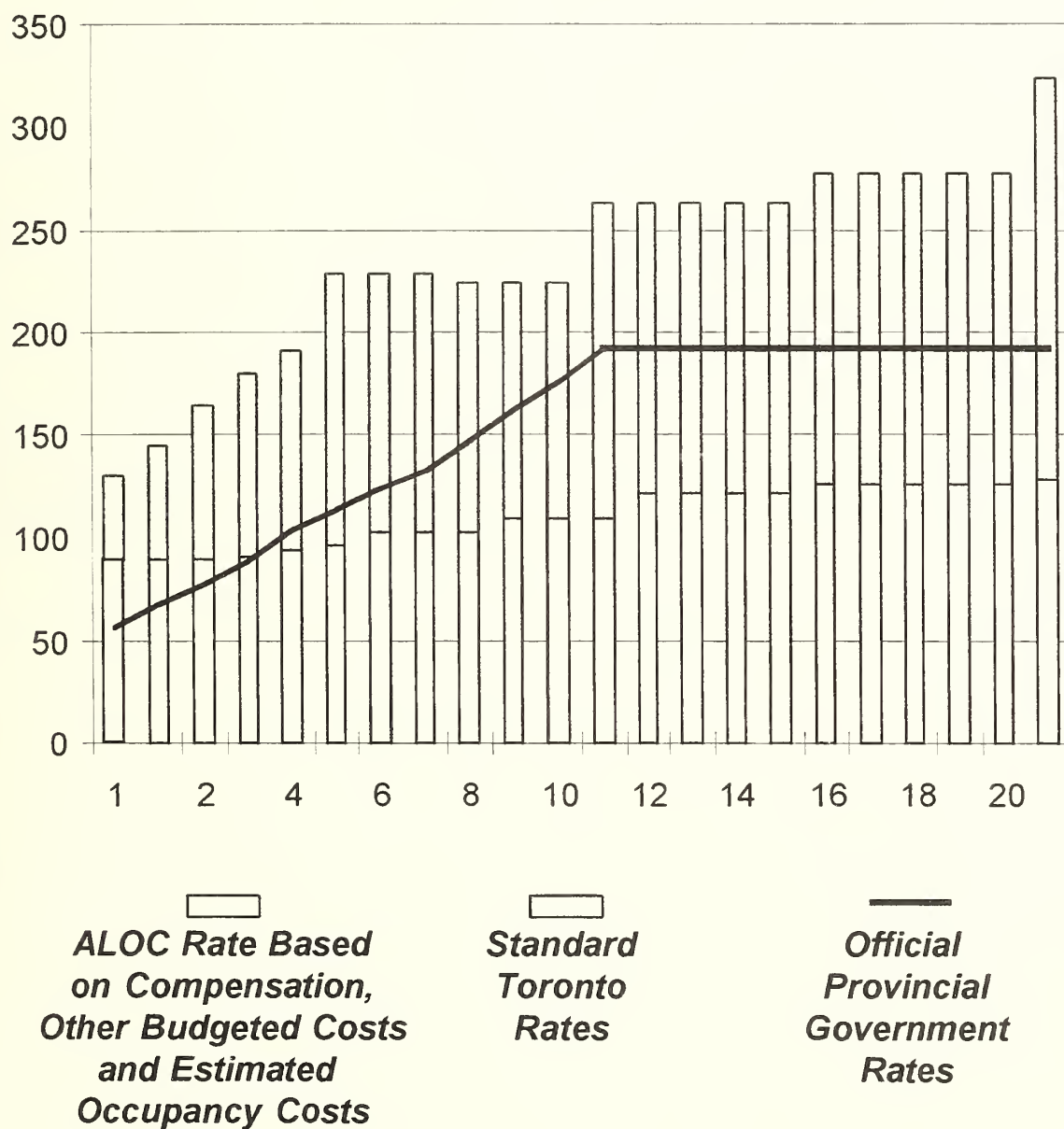


Figure 3



excluding the junior rates which are comparable to rates for the Family Support Program and Official Guardian work, is \$171.

The standard rates used in Schedule 3 for private sector Toronto firms are taken from the 1995 Canadian Bar Association "Law Practice and Compensation Survey." Unlike the Price Waterhouse survey, this survey does not differentiate between Toronto firms on the basis of size.

The main reasons for higher private-sector billing rates are:

- Toronto private practice compensation levels are higher than compensation levels for ALOC members (see Section 4.1); and
- Private sector hourly rates have to cover overhead costs which include marketing, practice development, management fees and, generally, a higher quality of furniture, fixtures and leasehold improvements than normally found in the public sector.

5.2 Comparison of Estimated Total Costs

Schedule 4 calculates the estimated costs of outsourcing the fiscal 1994/95 in-house workload using three scenarios. The calculations assume that the private sector would provide the same mix of experience and operating efficiencies as ALOC members such that the total hours to complete the work would be the same. The scenarios are based on three totals for annual billable hours: 1,200 hours, 1,500 hours and 1,800 hours. We compared the cost of using ALOC lawyers at each of those annual billable hourly totals to the total cost of outsourcing this work to the private sector at:

- the average official Provincial Government rate for private sector retentions of \$169; and
- the average standard Toronto private practice rate of \$236.

Outsourcing is more expensive under all three scenarios, i.e., whether ALOC members are considered to work the equivalent of 1,200, 1,500 or 1,800 billable hours per annum. This follows from the billing rate analysis in Section 5.1 and is illustrated in Figure 4.



**Total Costs to Complete Current Fiscal Year
1994/95 In-House Legal Services Work if
it had Been Outsourced to the
Private Sector (Millions of \$)**

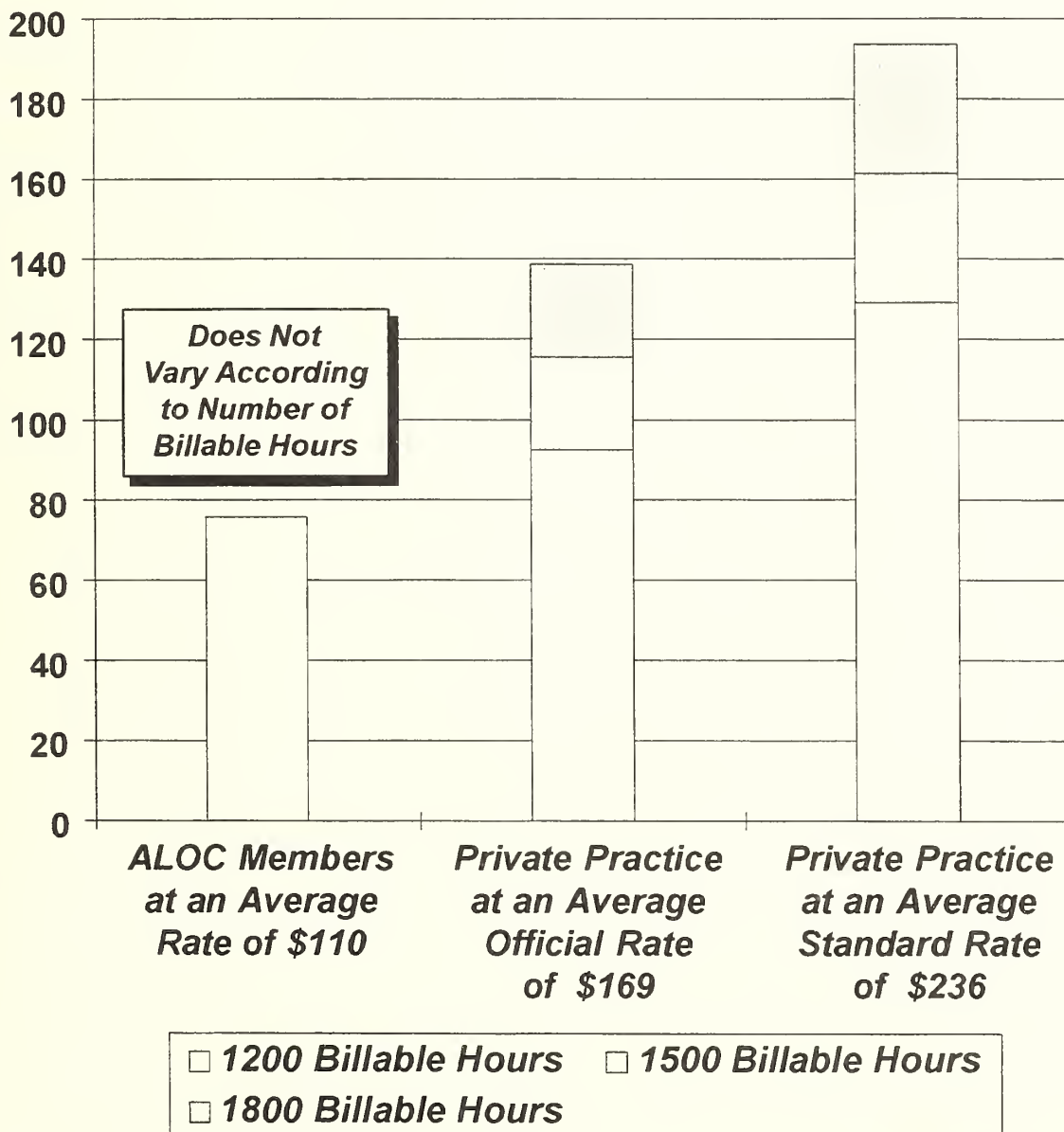


Figure 4



If it is assumed that ALOC members complete 1,500 billable hours of work per annum:

- it would cost \$115.6 million to complete this work at the average official Provincial Government retention rate, an incremental cost of \$39.9 million compared to the in-house cost of \$75.7 million; and
- it would cost \$161.4 million to complete this work at the average of the standard Toronto private practice rates, an incremental cost of \$85.7 million compared to the in-house cost of \$75.7 million.

We note the incremental costs of outsourcing will be higher if it is assumed that ALOC members work more than 1,500 billable hours per annum, and lower if it is assumed that ALOC members work less. ALOC has provided us with documentary evidence to support the position that a number of their members work up to and in excess of 1,800 equivalent billable hours per annum. We have calculated the hourly billing rates in Section 5.1 above using 1,500 billable hours as an average number. This compares to private practice averages as reported in the Canadian Bar Association 1995 Law Practice and Compensation Survey which reports average billable hours in Toronto of 1,515 for partners and 1,382 for associates.

These findings parallel those of a Government study on this issue. The Civil Law Review Program commented: "Use of private sector counsel ... is usually more expensive than use of internal resources."

5.3 Specific In-house and Private Sector Cost Comparisons

Summarized below are two examples of direct hourly cost comparisons on cases which involved the participation of both ALOC members and lawyers in private practice. Lindquist Avey was able to examine copies of the actual legal bills.

- In a malicious prosecution case the Crown Attorney was represented by a private law firm while the Provincial Government was represented by an ALOC member. The private practice law firm charged an average hourly rate of \$173 while the ALOC hourly rate was \$110.



-
- In a public hearing on the siting of a garbage dump the Ministry of Environment and Energy was represented by an ALOC member at \$110 an hour. The regional municipality in the hearing was represented by a private law firm that charged an average hourly rate of \$243.



**6.0 IN-HOUSE CIVIL
LEGAL
SERVICES
PROVIDED BY
ALOC MEMBERS**

The approximate 450 ALOC members provide a wide range of legal services for the government and all its ministries. In particular, they:

- provide legal, program, policy and legislative advice;
- draft laws, regulations and procedures;
- defend Government decisions before licencing tribunals and regulatory boards;
- perform legal research;
- represent the Government in civil litigation and appeals; and,
- prosecute provincial offences and ensure compliance with provincial regulations.

**6.1 The Civil Law
Responsibility of
the Ontario
Attorney
General**

The Chief Crown Law Officer, the Attorney General, is responsible for the administration of justice in Ontario. The Attorney General's civil law duties were defined by a 1968 report by then Chief Justice McRuer as the supervision of government litigation and supervision of legislation.

McRuer said:

"The legal affairs of all government agencies should be under the direct control of the Attorney General ... we recommend that all matters brought before the courts should come under the direct supervision of the Attorney General and his staff. He should truly function as Chief Counsel for the Crown, not necessarily by taking cases himself, but by being responsible for the conduct of all cases."

McRuer added that the then system of having lawyers acting independently in each ministry without supervision of the Attorney General's office:

"tends to departmentalize them so that their legal advice to the department on ordinary matters that arise daily, and on legislation does not have the objectivity that is essential for the protection of the broad public interest ... law in its true sense cannot be departmentalized."



His report led to the creation of the current civil law structure in the Attorney General's Ministry.

One arm of the ministry, the Crown Law Office, Civil, today has carriage of more than 4,000 open files, a number of which involve claims against the Ontario government in excess of \$20 million.

**6.2 Public Law
Expertise
Available to the
Government**

ALOC members provide a broad range of Public Law services.

Legislative Counsel

This office has final drafting responsibility for all legislation, amendments to legislation and most private members' bills. It ensures that all new laws are consistent with existing laws, are enforceable and will withstand constitutional challenges.

Constitutional Law

The lawyers who specialize in this area provide the Government with advice on all constitutional matters including the Charter of Rights and Freedoms. They appear often in the Ontario Court of Appeal and the Supreme Court of Canada to represent the government in constitutional challenges to Ontario laws, regulations or the provincial public interest.

Legal Policy Development

This group prepares cabinet submissions on new legislative initiatives and provides ongoing policy advice to the Attorney General. It has the responsibility for ensuring that new government initiatives are legal. In recent years, the group has promoted the development of alternative dispute resolution initiatives to find quicker and less expensive methods to settle civil disputes.

Aboriginal Law

The Province is party to a number of First Nations land claim negotiations and is involved in complex litigation arising out of claims filed by native bands across the Province. Ongoing legal



advice to the Native Affairs Secretariat, the Solicitor General and other affected ministries is provided by ALOC members. The aboriginal law specialists are also able to respond quickly to road block or park occupation emergencies that require immediate and often overnight preparation of motions to obtain court injunctions.

Environment Law

Environment Ministry lawyers prosecute pollution offences as well as assist in the ongoing development of environmental legislation, regulations and programs. They also respond to environmental emergencies. Also, its lawyers appear on behalf of the government when it is sued by victims of pollution for regulatory negligence, the non-enforcement of environmental laws.

Business Law

Government lawyers advise on the registration and reporting of businesses, the registration of personal property security and the recording of all Ontario real estate transactions. In addition, they provide legal advice and interpretation in the regulation of the securities, pension and insurance industries. Many of Canada's top corporate lawyers seek advice and guidance from the government's company law experts.

Finance

All the legal work involving the issuance of Ontario Government bonds and derivatives in the world's financial markets is done by lawyers in the Ministry of Finance. They also draft the Province's banking agreements and provide advice to ministry staff who oversee trust companies, credit unions and mortgage brokers. They also advise on all changes, or additions to, provincial taxes. More recently they have advised the government on international trade issues.



Provincial Budgets

In the months leading up to the tabling of the Provincial Budget, lawyers in both the Revenue and Treasury arms of the Ministry of Finance routinely put in seven-day weeks of 12 to 14 hour days. Lawyers are key players in: the preparation of position papers outlining budgetary options; consultation with parties that may be impacted by new programs or taxes; and in the drafting of changes to legislation that may flow from the budget.

A thorough knowledge of the budget process, of tax law and of the often delicate balance between the public interest and a government's political agenda make work in this field highly specialized.

Labour Law

In recent months, Labour Ministry lawyers worked on drafting the Government's legislative changes to the Workers' Compensation Board and the Province's labour law.

Prosecutions and Compliance Enforcement

The prosecution of provincial statutes and regulations is an essential function of many ALOC members.

The statutes and regulations protect health and safety in the workplace and in the trucking industry, and govern the proper functioning of elevators and nursing homes. In addition, provincial rules cover the gaming industry, meat processing, and fishing and hunting.

Provincial Agencies, Boards and Commissions

ALOC members provide legal counsel to Provincial agencies, boards and commissions, including advice on the conduct of public hearings, on judgments and other administrative law matters. They also appear in court to represent the interests of their client agencies, boards and commissions.



Civil Litigation

Crown Law Office, Civil handles the government's most difficult and complex litigation and negotiation cases. It has just over 4,000 active cases including all large damage claims against the Province. There are currently 27 claims against the Ontario Government where potential liability in each case is in excess of \$20 million. One suit is claiming damages of \$90 billion dollars from the Province. Many of these cases involve difficult land claims or commercial disputes and are among the most complex legal issues currently being heard in Ontario courts. Our research indicates that the office has seen a steady increase in complex new files.



**7.0 COST CUTTING
STRATEGIES OF
OTHER
GOVERNMENTS**

We interviewed senior officials in the Federal Government and the Governments of Alberta, British Columbia and New Brunswick in respect of how they are curtailing civil legal costs.

**7.1 Federal
Department of
Justice**

The Federal Justice Department provides legal services to all federal departments. It has a central office in Ottawa and regional offices across the country that handle federal litigation and provide ongoing legal advice and consultation.

The Department is under a directive to reduce its budget by 16% over the next three fiscal years. It has determined that contracting out legal services to lawyers in private practice is, on balance, not cost effective. Thus, to meet the budget reduction target, it is reducing the amount of government legal work done by private law firms.

7.1.1 Cost Comparison

Justice officials have analyzed the Department's legal costs and determined that it is approximately twice as expensive to have legal work done in the private sector – i.e., government agent work – than by Department lawyers.

The average cost for a Federal Government lawyer is approximately \$110 an hour (including salary, benefits and office overhead) while a lawyer in private practice can cost the Federal Government up to \$200 an hour.

For instance, on the criminal side, the Justice Department has moved some of its drug prosecutions in-house.

The Department has hired approximately 100 lawyers on contract to handle civil and criminal work that was previously done by outside lawyers. A senior Justice official said it is likely the pace of repatriating legal work in-house will pick up as savings are demonstrated.



Justice expects to meet much of its budget reduction target by the savings achieved from moving government legal work in-house.

7.1.2 Pilot Studies

Client departments have asked the Justice Department to consider finding alternative, cheaper means of charging for legal services.

Justice officials have responded by designing several pilot studies to control costs but maintain continuity and quality of its legal services.

Three departments – Industry, Treasury Board and Heritage Canada – will soon be direct billed for all legal services provided by the Justice Department. This cost recovery system should make all parties more conscious of legal service costs, said the person in charge of the program.

In another study, Justice Department officials put a legal team together to handle pension appeals for the Human Resources Department, work that had previously been contracted out.

Similarly, another team has been assembled to handle the large volume of Unemployment Insurance Commission appeals.

Other pilot projects are being developed for Revenue Canada and the Department of Indian and Northern Affairs to bring legal work in-house that traditionally has been contracted out.

7.1.4 Cost Controls in Other Countries

Federal Justice officials say they have canvassed legal cost containment experiences in other countries. They found that a combination of direct cost recovery from client departments, a client-driven service model and more rigorous case management was an effective strategy for reducing the demand for legal services and lowering costs.



7.2 Other Provincial Government Experience

Officials of the three provinces surveyed indicated they are cutting back on the use of outside lawyers to curtail costs.

7.2.1 Alberta

The rigorous fiscal restraint program in place for the past three years in Alberta resulted in wage cuts to the Justice Department's 100 civil lawyers but no elimination of jobs. Justice Alberta made most of its savings from eliminating the use of outside private practice lawyers.

7.2.2 New Brunswick

New Brunswick has had very tight fiscal restraints for the past four years and as a result the Ministry of Justice hires very few outside lawyers. Apart from some property title searches the Province's legal work is centralized in Fredericton and handled by government lawyers.

A senior Justice official said that conflict of interest is also a big potential problem and could pose a serious impediment to any government seeking independent legal advice from the private sector.

7.2.3 British Columbia

The Justice Ministry has curtailed the use of outside lawyers over the past five years to save money.

One government lawyer now does all the legal work for the Province's bond financings, work that used to cost the Province close to \$1 million a year when done by outside law firms.

British Columbia Justice officials have found that government lawyers can do the Province's legal work for half the cost of private legal advice. One official interviewed said that in many cases the quality of in-house legal work was better simply because government lawyers have continuous exposure to their clients and have a detailed knowledge of how government works.



British Columbia uses private practice lawyers to provide child protection and family law representation in remote areas of the Province. Most of the lawyers doing the work are on hourly or monthly retainers and are supervised by lawyers in Victoria. Competitions to provide legal services for the government are held every three years.

7.3 The United Kingdom

An October 31, 1988 report entitled "Review of Government Legal Services" in the United Kingdom was prepared by Sir Robert Andrew KCB. The review examined whether it made economic or practical sense to have government legal services provided in-house or by private sector lawyers, taking into account the government's policies of privatization and contracting out.

The review found that:

"... because of the nature of the work, the skills and experience required and the need for close contact with Ministers and administrators, the service can only sensibly be provided by lawyers located in government departments and directly responsible to the Ministers in charge of them. Even where work is put out to the private sector a degree of internal supervision is likely to be required.

Moreover, from the comparative figures I have been able to obtain it is clear that as a general rule work is more cheaply performed in government than outside, especially in London."

The study found comparative cost examples which showed that it was much cheaper to perform the work in-house.

One example:

- A private solicitor estimated he would charge £90,000 to arrange a lease on a London property valued at £4.68 million.
- A government solicitor estimated his cost as being no higher than £5,350.



7.3.1 *Qualitative Issues in the U.K.*

The report also commented on the qualitative benefits of in-house civil legal services. It indicated that:

- "The most important reason for maintaining the advisory function in government is that this enables ministers to call on legal advisers who are immediately at hand; who are familiar not only with the issue in question but with the government's general policies and the [procedures of government and Parliament]; who are used to working on a daily basis with their administrative colleagues so that they are consulted by them at an early stage. The advisers need to be people whom the Minister knows and has confidence in, who can provide continuity and consistency in their advice and who can be relied on to take a broad and objective view of the public interest. It seems to me that for most day-to-day legal business this sort of service can best be provided by in-house lawyers who have made a career in government, dealing with public as well as private law.";
- The main source of expertise on certain subjects, such as constitutional law, lies in government, and would not be easily obtainable elsewhere;
- There are certain highly confidential matters, particularly in the area of finance and taxation, which a Government would prefer to keep in-house; and
- In respect of private sector lawyers, there is the potential risk of conflict between their existing clients and the interests of government.



8.0 OTHER CONSIDER- ATIONS

Other factors may impact on any decision to substantially reduce public sector civil legal services and increase the Government's reliance on private practice legal services.

The Government may wish to consider the following:

- ALOC members are not subject to the same potential for conflicts of interest as private sector law firms which have a multiplicity of clients. With increased outsourcing, potential conflicts of interest could hamper the Government's ability to obtain consistency, continuity and independence of legal advice;
- The Government currently enjoys an ease of access and consultation with ALOC members who are on-site and thus can readily provide the advice necessary in formulating Government policies and procedures. It may be difficult and costly for the Government to obtain the same daily service from private practice lawyers;
- All Ministries rely upon the Crown Law Office, Civil, which is housed at the Ministry of the Attorney General, to provide litigation services in major matters. Reductions in its staff may result in Ministries having to retain those services from private sector law firms at higher rates. Our review suggests that the litigation services provided by Crown Law Office, Civil, tend to require senior counsel;
- Other governments indicate that they are in the process of implementing a charge-back system to control legal costs. In Ontario, under a charge back system, the Ministry of the Attorney General would recover from client Ministries the real costs incurred in respect of services provided to them by staff of the Crown Law Office, Civil. Based on the experience of other jurisdictions, a charge-back system could offer substantial savings over outsourcing the client Ministry work;
- The nature and extent of legal services required to efficiently initiate and sustain the Government's current legislative



program, given the government's intention to reduce the size of the Public Sector;

- The value of maintaining its members' institutional memory on legal issues, and the considerable investment it has made in developing Public Law expertise in its legal services. For example, we note the ability of ALOC members to successfully defend a constitutional challenge to the Government's right to reduce social assistance benefits by 21.6 per cent, which will generate an estimated \$1-billion in savings; and
- The administrative costs of allocating, controlling and monitoring private sector retentions if the volume of outsourced legal work is increased. At present we have insufficient information to estimate these costs. In addition, it may also wish to consider the cost of renting and/or maintaining office space which would no longer be required and which could not necessarily be avoided in the short term.



ASSOCIATION OF LAW OFFICERS OF THE CROWN ("ALOC")

Estimated Total Costs of Legal Services Provided to the Ontario Provincial Government for the Fiscal Year 1994/95

DESCRIPTION		VALUE	
In House Costs:			
ALOC Members:			
- Compensation	[1]	\$38,463,346	41%
- Benefits	[2]	6,152,015	7%
Support Staff:			
- Articling Law Students (Salaries and Benefits)	[3]	1,820,000	2%
- Secretarial (Salaries and Benefits)	[4]	9,496,200	10%
Other Budgeted Costs:	[5]	15,000,000	16%
Estimated Occupancy Costs:	[6]	4,788,000	5%
Sub-total for In-House Costs		75,719,561	81%
Outside Costs:			
- Fees (including disbursements of \$934,708) for Private Sector Retentions	[7]	17,888,836	19%
Estimated Total Cost of Legal Services for the Fiscal Year 1994/95		<u>\$93,608,397</u>	<u>100%</u>

Notes:

- [1] Source: Report titled "Professional Bargaining Lawyers - Sorted by Ministry, Class Title, Surname Data as of March 31, 1995" prepared by the Provincial Government.
- [2] Assumption: Benefits represent 19% of total compensation costs (as per "Government of Ontario - Legal Services Contracting Out Analysis for 1992/93 Fiscal year" interim report dated November 23, 1993 prepared by ALOC). Benefits include dental, extended health and life insurance plans and pension contributions. Note that a reduction has been made to benefits to reflect approximately 100 lawyers who are "unclassified" lawyers and who receive 10% additional compensation in lieu of benefits; this additional 10% has been categorized as compensation.
- [3] Assumption: 50 articling students at an average salary of \$35,000 plus 4% benefits.
- [4] Assumption: 228 support staff (ratio of 1 support staff: 2 lawyers) at an average salary of \$35,000 plus 19% benefits.
- [5] Assumption: Based on ratio of number of lawyers to total ministry budgets for legal services as provided in the schedule "1995/96 Public Law and Policy Division Budget". Other budgeted costs include amounts for transport and communication, services, supplies and equipment.
- [6] Available ministry financial information does not provide any comprehensive information with respect to occupancy costs, being defined as costs relating to building and building operating costs (including such items as utilities, real estate taxes and building maintenance). For the purposes of this analysis, we have estimated the costs of occupancy at \$10,500 per lawyer which, when factored into our analysis in Schedule 3, results in an equivalent billing rate of \$110. This equates to the average billable hourly rate which was used by The Office of the Executive Co-Ordinator, Seconded Legal Services as reported in the ALOC prepared report "Government of Ontario Legal Services Contracting Out Analysis for 1992/93 Fiscal Year (Based on Ministry Assumptions)" dated April 15, 1994.
- [7] Source: Report 9A "Summary of Payments to Private Sector Law Firms During the Fiscal Year Ending: March 31, 1995" prepared by the Ministry of the Attorney General, reduced by 14.8% for per diem crowns who perform criminal (as opposed to civil) work for the Ministry of the Attorney General (14.8% being the average % of per diem crown work out of total fees paid over the fiscal years 1990/91 to 1994/95).



ASSOCIATION OF LAW OFFICERS OF THE CROWN ("ALOC")

Comparison of 1995 ALOC Compensation Levels to Private Practice Compensation Levels for Toronto Based on Year of Call to The Bar

BAR ADMISSION		ALOC MEMBERS		PRIVATE PRACTICE - TORONTO			
Year of Call	No. of Years Since Call	Average Compensation Per Year of Call	Averaged Compensation For Senior Years	Firms With 1-40 Lawyers		Firms With 41+ Lawyers	
		[1]		Median Compensation Per Year of Call	Percentage of ALOC Compensation	Median Compensation Per Year of Call	Percentage of ALOC Compensation
				[2]		[2]	
1995	<1	\$51,369		\$53,500 [3]	104%	\$58,350 [5]	114%
1994	1	51,120		65,000 [3]	127%	67,000 [5]	131%
1993	2	51,195		77,000 [3]	150%	76,000 [5]	148%
1992	3	53,542		- [3]	-	90,000 [5]	168%
1991	4	58,724		80,000 [3]	136%	104,400 [5]	178%
1990	5	61,784		94,000 [3]	152%	116,000 [5]	188%
1989	6	67,743)					
1988	7	74,224)	72,596	125,000 [4]	172%	147,600 [6]	203%
1987	8	75,821)					
1986	9	75,536)					
1985	10	79,716)	82,052	182,300 [4]	222%	187,200 [6]	228%
1984	11	90,905)					
1983	12	94,732)					
1982	13	98,144)	99,638	222,750 [4]	224%	272,600 [6]	274%
1981	14	98,585)					
1980	15	107,092)					
1979	16	104,044)					
1978	17	104,746)					
1977	18	109,556)	106,884	201,000 [4]	188%	319,000 [6]	298%
1976	19	110,590)					
1975	20	105,482)					
> 1975	>21	109,873		171,600 [4]	156%	320,380 [6]	292%

Notes:

- [1] Source: Reports titled "Professional Bargaining Lawyers - Sorted by Ministry, Class Title, Surname Data as of March 31, 1995" and Human Resources Information System Listing of Lawyers by Year of Call" prepared by the Provincial Government.
- [2] Source: "The Price Waterhouse 1995 Law Firm Compensation Survey". The median results have been utilized to provide more accurate comparisons to ALOC compensation rates as the median is not influenced by a few unusually high or low values. Averages have been calculated for ALOC members as the salary levels based on year of call are evenly distributed and follow a normal distribution pattern.
- [3] Assumption: Appropriate comparison to ALOC members based on median of "Total Annual Compensation for Associates" for Toronto firms with 1 to 40 lawyers.
- [4] Assumption: Appropriate comparison to ALOC members based on median of "Total Annual Compensation for Partners" for Toronto firms with 1 - 40 lawyers.
- [5] Assumption: Appropriate comparison to ALOC members based on median of "Total Annual Compensation for Associates" for Toronto firms with 41+ lawyers.
- [6] Assumption: Appropriate comparison to ALOC members based on median of "Total Annual Compensation for Partners" for Toronto firms with 41+ lawyers.



ASSOCIATION OF LAW OFFICERS OF THE CROWN ("ALOC")

Comparison of 1995 ALOC Hourly Rates to Toronto Private Practice Billing Rates Based on Year of Call to The Bar

BAR ADMISSION		ALOC MEMBERS		PRIVATE PRACTICE - TORONTO			
Call Year	No. of Years Since Call	[B]		Official Provincial Govt. Rates	Percentage of [B]	Standard Toronto Rates	Percentage of [B]
		[A]	Rate Based on Compensation, Other Budgeted Costs and Estimated Occupancy Costs				
		Rate Based on Compensation Only					
		[1]	[2]	[3]			
1995	<1	\$34	\$89	\$56	63%	\$130 [4]	147%
1994	1	34	89	67	76%	145 [4]	164%
1993	2	34	89	77	87%	165 [4]	186%
1992	3	36	90	88	98%	180 [4]	200%
1991	4	39	94	104	111%	191 [5]	204%
1990	5	41	96	114	119%	228 [6]	238%
1989	6	48	103	124	121%	228 [6]	222%
1988	7	48	103	132	128%	228 [6]	222%
1987	8	48	103	147	143%	224 [6]	218%
1986	9	55	109	162	148%	224 [6]	205%
1985	10	55	109	176	161%	224 [6]	205%
1984	11	55	109	192	176%	263 [6]	241%
1983	12	66	121	192	159%	263 [6]	218%
1982	13	66	121	192	159%	263 [6]	218%
1981	14	66	121	192	159%	263 [6]	218%
1980	15	66	121	192	159%	263 [6]	218%
1979	16	71	126	192	153%	277 [6]	220%
1978	17	71	126	192	153%	277 [6]	220%
1977	18	71	126	192	153%	277 [6]	220%
1976	19	71	126	192	153%	277 [6]	220%
1975	20	71	126	192	153%	277 [6]	220%
>1975	>21	73	128	192	150%	323 [6]	253%
Average Rate		\$56	\$110	\$169 [7]		\$236	

Notes:

- [1] Calculated based on actual ALOC member compensation levels by year of call (Schedule 2) assuming 1,500 equivalent billable hours per annum for each ALOC member.
- [2] Calculated based on actual ALOC member compensation levels by year of call (Schedule 2) assuming 1,500 equivalent billable hours per annum for each lawyer and average figure for budgeted costs and occupancy costs of \$81,702 per lawyer to cover benefits support staff etc. (per Schedule 1, "other" in-house costs total \$37.3 million for 456 lawyers which averages to \$81,702 per lawyer).
- [3] Source: Schedule titled "Ministry of the Attorney General Hourly Rates for Retention of Private Sector Lawyers" effective May 15, 1993. Junior lawyer assumed to have up to 4 years of experience; intermediate lawyer assumed to have up to 8 years of experience, senior lawyer up to 10 years of experience and most senior lawyers over 10 years of experience.
- [4] Source: Toronto associate billing rates from The Canadian Lawyer's December 1995 article "The 1995 National Associate Survey".
- [5] Source: Toronto associate billing rates from the Canadian Bar Association 1995 "Law Practice and Compensation Survey".
- [6] Source: Toronto partner billing rates from the Canadian Bar Association 1995 "Law Practice and Compensation Survey".
- [7] For the purposes of this analysis we have used an average rate of \$169. This average was reported to us as the average calculated by a review of the database of all invoiced outsourced legal services with the exclusion of the Family Support and Official Guardian Programs. We were advised that this calculation was done to establish an average rate to use in comparing outsourcing costs to in-house rates. We note that a simple average of the Official Provincial Government rate, excluding the junior rates which are comparable to rates for the Family Support Program and Official Guardian work, is \$171.



ASSOCIATION OF LAW OFFICERS OF THE CROWN ("ALOC")

Total Costs to Complete Fiscal Year 1994/95 In-House Legal Services if the Work Had Been Outsourced to Toronto Based Private Practice Law Firms Compared to Estimated Total In-House Costs

ASSUMPTIONS RE: ALOC MEMBERS' BILLABLE HOURS

		Scenario 1	Scenario 2	Scenario 3
Total Hours Per Week:	[1]	36.25	45	55
Total Hours at Work:	[2]	1,631	2,025	2,475
Total Billable Hours:	[3]	1,200	1,500	1,800
Billable as % of Total:		74%	74%	73%

WORK PERFORMED BY:

ALOC Members at an Average Cost Rate of \$110	[4]	\$75,719,561	\$75,719,561	\$75,719,561
Private Practice at an Average Official Provincial Government Billing Rate of \$169	[5]	\$92,476,800	\$115,596,000	\$138,715,200
Private Practice at an Average Standard Billing Rate of \$236	[6]	\$129,139,200	\$161,424,000	\$193,708,800

Notes:

- [1] Assumed in Scenario 1 that all ALOC members work 36.25 hours per week (36.25 hours being the statutory minimum); in Scenario 2, assumed that all members work 45 hours in an average week; in Scenario 3, assumed that all members work 55 hours in an average week.
- [2] If it is assumed that there are 45 working weeks in a year (after deducting 4 weeks vacation, 2 weeks statutory holidays, personal days etc.), then these are the total hours worked per annum under each scenario.
- [3] Assumed that not all hours will represent equivalent billable hours due to staff meetings, general admin. etc. and, on average, 70% to 75% is billable. These numbers compare reasonably to the 1995 Canadian Bar Association Survey which averages Toronto partner and associate billable hours to be 1,515 and 1,382 hours respectively.
- [4] Based on the average cost rate of \$110 from Schedule 3 for ALOC members, the total cost can be calculated as \$75.2 million. For the purposes of this comparison, we have used the more precise total costs as per Schedule 1 of \$75,719,561.
- [5] Based on average billing rate from Schedule 3 for Provincial Government private sector retention rates.
- [6] Based on average billing rate from Schedule 3 for standard private sector Toronto rates.



